

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>GREGORY A LEWANDOWSKI,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>DARIN YOUNG, WARDEN, SOUTH DAKOTA STATE PENITENTIARY;</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: right;">4:20-CV-04029-LLP</p> <p>ORDER DENYING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS AND REQUIRING PLAINTIFF TO PAY THE FULL FILING FEE</p>
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Plaintiff, Gregory A. Lewandowski, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Doc. 1. At the time of filing this action, Lewandowski was an inmate at the South Dakota State Penitentiary. *Id.* at 1. Lewandowski moves for leave to proceed in forma pauperis and included his prisoner trust account report. Docs. 4 and 5.

Under the Prison Litigation Reform Act (PLRA), a prisoner who "brings a civil action or files an appeal in forma pauperis ... shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, "[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan." *Henderson v. Norris*, 129 F.3d 481,483 (8th Cir. 1997) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997).

Significantly, the PLRA prohibits a prisoner from requesting in forma pauperis status in an action or appeal if the prisoner has, *on 3 or more prior occasions*, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or

fails to state a claim upon which relief may be granted, *unless the prisoner is under imminent danger of serious physical injury*.

28 U.S.C. § 1915(g) (emphasis added). Lewandowski has previously proceeded in forma pauperis in three other cases that were dismissed pursuant to the screening procedures of § 1915. *See Lewandowski v. Day Cnty. Or. Ct. et al.*, Civ. 09-4089; *Lewandowski v. Flemmer*, Civ. 11-4125; *Lewandowski v. Day Cnty. Or. Ct.*, Civ. 11-4106. Moreover, Lewandowski has been denied permission to proceed in forma pauperis on three prior occasions because he was barred by the three-strike rule and could not demonstrate that he was under imminent danger of serious physical injury. *See Lewandowski v. Day Cnty*, Civ. 13-3011; *Lewandowski v. S. D. Dep 'f of Corr. ef al.*, Civ 13-4129; *Lewandowski v. Schreier*, Civ. 14-4063.

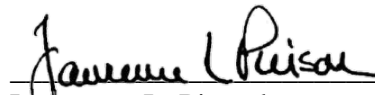
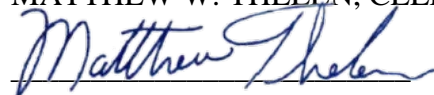
Lewandowski is therefore barred from proceeding in forma pauperis in any subsequent action, including the instant action, absent a showing that he is under imminent danger of serious physical injury. Because Lewandowski has failed to demonstrate that he is under imminent danger of serious physical injury, the Court denies his request to proceed in forma pauperis. Doc. 4. Lewandowski must pay the requisite \$400 filing fee to proceed with this action. Accordingly, it is ORDERED:

1. That Lewandowski's motion for leave to proceed in forma pauperis (Doc. 4) is denied. Lewandowski must pay the \$400 filing fee to the Clerk, U.S. District Court.

DATED August 19, 2020.

BY THE COURT:

ATTEST:
MATTHEW W. THELEN, CLERK



Lawrence L. Piersol
United States District Judge